Filed 1/15/09 P. v. Bobier CA2/2

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE, Plaintiff and Respondent, v. JON BOBIER, Defendant and Appellant.	B205301 (Los Angeles County Super. Ct. No. LA054616)

APPEAL from a judgment of the Superior Court of Los Angeles County. Barry A. Taylor, Judge. Affirmed.

Dennis L. Cava, under appointment by the Court of Appeal, for Defendant and Appellant.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Pamela C. Hamanaka, Assistant Attorney General, Keith H. Borjon and John R. Gorey, Deputy Attorneys General, for Plaintiff and Respondent.

_____

After the trial court denied his motion to suppress evidence under Penal Code section 1538.5, Jon Bobier (defendant) pleaded no contest to one count of possession of a controlled substance, methamphetamine, in violation of Health and Safety Code section 11377, subdivision (a). Defendant admitted having suffered a prior conviction for a serious or violent felony (a strike) under Penal Code sections 1170.12, subdivisions (a) through (d) and 667, subdivisions (b) through (i). The trial court sentenced defendant to the midterm of two years, doubled to four years due to the strike conviction.

Defendant appeals on the ground that the trial court erroneously denied his motion to suppress evidence because the search of his person was arbitrary and capricious in violation of his rights under article 1, section 13 of the California Constitution and the Fourth and Fourteenth Amendments of the United States Constitution.

FACTS

At the hearing on the motion to suppress evidence, the prosecution called Officer Christian Mayes of the Los Angeles Police Department. Officer Mayes stated he was assigned to the West Valley Division's property crime detail. He was called to investigate an incident where a woman reported that some of her property was missing after she had been helped by several individuals in moving house. The only name she gave police was that of Brian Done, whose address was on Avenue San Luis in Los Angeles County.

Officer Mayes went to the Avenue San Luis address, which was a single family home. He had had contact with Done at that house, and the house was known for criminal activity. Officer Mayes had been to the house on numerous occasions and had arrested people there for stolen cars, stolen property, burglary, and narcotics violations. The house had also been the subject of "chop shop" investigations.

Upon arriving at the house, Officer Mayes saw defendant, whom he recognized from prior contacts, standing next to an SUV parked in the driveway. Officer Mayes believed defendant was on parole, but he asked defendant about his parole status in order to be certain. Defendant admitted that he was on parole. Officer Mayes explained to defendant his reason for being at the house, what he was looking for, and the

circumstances of the incident. He asked defendant what he was doing, and defendant replied that he was working on the SUV. Officer Mayes believed that defendant knew Done, that they had been staying at the same residence, and that they were both acquainted with a Hugo Matsenhour and other people at the residence. Officer Mayes knew that Done had frequented the residence over the past several years. Officer Mayes believed he had seen defendant at the residence before, but he had no specific memory of when that occurred.

Officer Mayes conducted a parole search of defendant and recovered a small bag containing a white crystalline substance that he believed was methamphetamine.

DISCUSSION

I. Defendant's Argument

Defendant contends that because the prosecutor never elicited any testimony from Officer Mayes as to why he searched defendant, it must be deemed the search was done simply because defendant was on parole, which was arbitrary and capricious. Even though the officer did not need particularized suspicion that defendant was involved in criminal activity, he still needed a proper purpose. No proper purpose is apparent from the record. The prosecution did not meet its burden, and this court should not speculate as to what might have been a proper purpose. The evidence obtained by the unlawful search and seizure must be suppressed.

II. Relevant Authority

On appellate review, factual findings of lower courts are upheld if supported by substantial evidence. But when reviewing questions of law, such as whether a search or seizure was reasonable, we exercise independent judgment. (*People v. Camacho* (2000) 23 Cal.4th 824, 830.)

The absence of a warrant or a particularized suspicion for a parole search does not run afoul of the Fourth Amendment privacy interests, since a parolee lacks a legitimate expectation of privacy, and the state has a substantial interest in supervising parolees and reducing recidivism. (*Samson v. California* (2006) 547 U.S. 843, 852-853, 857.) In California, Penal Code section 3067, subdivision (a) provides that all parolees from state

prison are subject to "search or seizure by a parole officer or other peace officer at any time of the day or night, with or without a search warrant and with or without cause." This statutory provision is constitutional and it gives law enforcement the authority to search the parolee, his residence, and any property under his control. (*Samson v. California*, *supra*, at p. 857; see Cal. Code Regs., tit. 15, § 2511, subd. (b)(4) [describing the scope of parole searches].)

Thus, when a law enforcement officer knows that the defendant is on parole and subject to a search condition, the search is reasonable and does not violate any expectation of privacy, even in the absence of a particularized suspicion of criminal activity. (*People v. Sanders* (2003) 31 Cal.4th 318, 333; see also *People v. Hunter* (2006) 140 Cal.App.4th 1147, 1152.) However, "'[a] parole search could become constitutionally "unreasonable" if made too often, or at an unreasonable hour, or if unreasonably prolonged or for other reasons establishing arbitrary or oppressive conduct by the searching officer.' [Citations.]" (*People v. Reyes* (1998) 19 Cal.4th 743, 753-754 (*Reyes*).)

III. Proceedings Below

The prosecutor argued that the narrow issue was whether or not the search was arbitrary or capricious under *Reyes* and contended it was not. The officer was not there to target defendant, and the defendant was at a location known for criminal activity, some of which involved stolen cars. Defense counsel contended that, under *Reyes*, the search was arbitrary and capricious in light of the circumstances. The officer had no reason to believe defendant was involved in the crime that he was investigating and there was a barely articulable connection between defendant and Done. There was nothing "that the officer can sustain that would cause him to have some motivation to search [defendant] other than the fact that he encountered a guy who is on parole." The prosecutor stated in response that the trial court had the opportunity to observe the officer's demeanor, and it was clear the officer was not out to target defendant. There was nothing arbitrary, harassing or capricious about the search; rather, it was good police work. In ruling on the

defendant's motions, the trial court stated, "It's a little thing, but I think it just squeaks by. I am going to deny the motion."

IV. Motion Properly Denied

Under the authority cited heretofore, we conclude that defendant's suppression motion was properly denied and the search was not arbitrary or capricious under *Reyes*. In that case, the defendant's parole agent received an anonymous tip, which prompted him to ask police officers to go to the defendant's residence to evaluate him for drug use. The officers conducted a search of a shed that the defendant was seen exiting. (*Reyes*, *supra*, 19 Cal.4th at pp. 746-747.) The defendant was subject to a valid search condition under his parole release. The *Reyes* court applied the reasoning of *In re Tyrell J.* (1994) 8 Cal.4th 68 (*Tyrell J.*), which held that a juvenile probationer with a valid search condition had no reasonable expectation of privacy that society recognized as legitimate.[1] (*Reyes*, *supra*, at pp. 746, 751.)

In *Tyrell J.*, the court reasoned that a probationer who knows he is subject to search of his person or home without probable cause or a warrant lacks a reasonable expectation of privacy over his property or person. Therefore, no greater intrusion into his privacy occurs when an officer conducts a search. (*Tyrell J.*, *supra*, 8 Cal.4th at p. 86.) The *Reyes* court concluded that this proposition was equally applicable, if not more so, to persons subject to parole searches. (*Reyes*, *supra*, 19 Cal.4th at p. 751.) Like a juvenile probationer, a convicted felon has a reduced expectation of privacy and enjoys a conditional release for the purpose of rehabilitation. The threat of suspicionless searches is likely to act as a deterrent to criminal behavior, thus implementing the goal of rehabilitation. (*Id.* at p. 752.) The court added: "More importantly, the government's action is triggered by defendant's own conduct. The existence of this triggering event—

---

[1] *Tyrell J.* was subsequently overruled with respect to its conclusion that the law enforcement officer conducting a probation search of a juvenile need not know of the search condition. (*In re Jaime P.* (2006) 40 Cal.4th 128, 139.)

the crime which results in conviction or juvenile adjudication—creates the compelling need for government intervention and diminishes any reasonable expectation of privacy." (*Ibid*.) Therefore, even a suspicionless intrusion by officers is justified against an individual who is subject to a parole condition, since the person searched must first have a reasonable expectation of privacy before there can be a Fourth Amendment violation. (*Id*. at p. 754; see *Tyrell J*., *supra*, 8 Cal.4th at p. 89.)

The *Reyes* court did not hold that all searches pursuant to a condition of parole are constitutionally reasonable, however. (*Reyes*, *supra,* 19 Cal.4th at p. 753.) Its holding rested on the premise that a search conducted under the auspices of a parole search condition was "for a proper purpose." (*Id*. at p. 754.) The court stated that "'a parole search could become constitutionally "unreasonable" if made too often, or at an unreasonable hour, or if unreasonably prolonged or for other reasons establishing arbitrary or oppressive conduct by the searching officer.' [Citations.]" (*Id*. at pp. 753-754.) In support of this statement, *Reyes* cited *In re Anthony S.* (1992) 4 Cal.App.4th 1000, 1004 for the proposition that "a search is arbitrary and capricious when the motivation for the search is unrelated to rehabilitative, reformative or legitimate law enforcement purposes, or when the search is motivated by personal animosity toward the parolee." (*Reyes*, *supra*, 19 Cal.4th at p. 754.) The court also noted that *People v. Bremmer* (1973) 30 Cal.App.3d 1058, 1063, held that an unrestricted search of a probationer or parolee by law enforcement officers at their whim or caprice is a form of harassment. (*Reyes*, at p. 754.)

In the instant case, the search was not unreasonably prolonged or oppressive. It was not made at an unreasonable hour, nor was there any evidence that it was motivated by personal animosity toward defendant. The record reveals that Officer Mayes arrived at defendant's location in order to investigate a theft of property. The victim had stated that one of the persons involved was Done, who lived at the Avenue San Luis address where defendant was found. Officer Mayes went to that location, not in search of defendant, but to investigate the theft. He knew that the house was associated with various theft crimes and had been investigated as a chop shop. He knew that defendant

was sometimes in residence at the house and that defendant knew Done, who was named by the victim. Significantly, defendant stated he was working on an SUV that stood in the driveway of the residence. The officer knew and verified that defendant was a parolee who, under the holding of *Reyes*, had no expectation of privacy that society recognizes as legitimate. (*Reyes*, *supra*, 19 Cal.4th at p. 754.) Although Officer Mayes could not definitively tie defendant to the recent theft, his search of defendant's person at a house whose occupants were frequently implicated in thefts and other criminal activity—including the theft the officer was investigating—cannot be deemed arbitrary. The search he conducted was minimally intrusive, and no animosity toward defendant was shown. Balancing all of these factors, we conclude the methamphetamine found in defendant's pocket was not the product of a constitutionally unreasonable search. There is no indication that the search by Officer Mayes was the result of a whim or caprice. (See *People v. Bremmer*, *supra*, 30 Cal.App.3d at p. 1063.)

Although Officer Mayes did not articulate any rehabilitative, reformative, or other legitimate law enforcement purpose to justify the search, the record certainly does not show that the officer's motivation was unrelated to legitimate law enforcement purposes, or that that search was arbitrary or capricious. (Cf. *People v. Zichwic* (2001) 94 Cal.App.4th 944, 948-956 [assuming attachment of monitoring device to paroled burglar's truck was a search, it was not arbitrary or capricious given rash of burglaries in vicinity of his residence after his release from prison].) As noted in *Reyes*, "'"The purpose of an unexpected, unprovoked search of defendant is to ascertain whether [the parolee] is complying with the terms of [parole]; to determine not only whether he disobeys the law, but also whether he obeys the law. Information obtained under such circumstances would afford a valuable measure of the effectiveness of the supervision given the defendant . . . ."' [Citations.]" (*Reyes*, *supra*, 19 Cal.4th at p. 752.) Moreover, inasmuch as "the purpose of the search condition is to deter the commission of crimes and to protect the public, . . . the effectiveness of the deterrent is enhanced by the potential for random searches." (*Id.* at p. 753.)

We conclude the search by Officer Mayes was reasonable under the totality of the circumstances in this case, and the trial court properly denied the suppression motion.

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

_____, J.
CHAVEZ

We concur:

_____, P. J.
BOREN

_____, J.
DOI TODD